

EXECUTIVE SECRETARIAT
 Routing Slip

TO:		ACTION	INFO	DATE	INITIAL
1	DCI				
2	DDCI				
3	S/MC				
4	DDS&T				
5	DDI				
6	DDA				
7	DDO		X		
8	D/DCI/IC		X		
9	D/DCI/NIO				
10	GC				
11	LC				
12	IG				
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14	D/Pers				
15	D/S				
16	DTR				
17	Asst/DCI				
18	AO/DCI				
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SUSPENSE		Date			

Remarks:

Copies were forwarded yesterday by SC/DCI to GC and DDI (see note attached).

D/Executive Secretary
 10 Mar 76

Date

3637 (1-75)

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XR TS-209035

Approved For Release 2005/07/13 : CIA-RDP79M00467A001100180013-7 76 - 857

filed Justice
Miss Justice
Blank 180
2 Mar 76

Ed Proctor
John Warner

The attached is still
a draft memo to the
Pres. I have told D.J.
that we want a para.
indicating that under
the bill we cannot
engage in collection of
economic intelligence
in the U.S.

If you agree, will
you generate such a
~~para.~~ para. for this
afternoon. Thanks -

P.S. any other
comments would
of course be
welcome -

10:30 a.m.
3/9

Executive Registry

76-69703

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A B I L L

To amend Title 18, United States Code, to authorize applications for a court order approving the use of electronic surveillance to obtain foreign intelligence information.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,
that this Act may be cited as the "Foreign Intelligence Surveillance Act of 1976."

Sec. 2. Title 18, United States Code, is amended by adding a new chapter after Chapter 119:

Chapter 120. Electronic Surveillance within the United States for Foreign Intelligence Purposes --

Section 2521. Definitions.

(a) Except as otherwise provided in this section the definitions of Section 2510 of this title shall apply to this chapter.

(b) As used in this chapter --

(1) "Agent of a foreign power" means:

(i) a person who is not a permanent resident alien or citizen of the United States and who is an officer or employee of a foreign power; or

(ii) a person who, pursuant to the direction

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of a foreign power, is engaged in clandestine intelligence activities, sabotage, or terrorist activities, or who conspires with, assists or aids and abets such a person in engaging in such activities.

(2) "Electronic surveillance" means:

(i) the acquisition, by an electronic, mechanical, or other device, of the contents of a wire communication to or from a person in the United States, without the consent of any party thereto, where such acquisition occurs in the United States while the communication is being transmitted by wire;

(ii) the acquisition, by an electronic, mechanical, or other device, of the contents of a radio transmission, without the consent of any party thereto, made with a reasonable expectation of privacy where both the point of origin and all intended recipients are located within the United States; or

(iii) the installation of an electronic, mechanical, or other device in the United States to acquire information not transmitted by wire or

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radio under circumstances in which a person has a reasonable expectation of privacy.

(3) "Foreign intelligence information" means:

(i) information relating to the ability of the United States to protect itself against actual or potential attack or other hostile acts of a foreign power or its agents;

(ii) information, with respect to foreign powers or territories, which because of its importance is deemed essential to the security or national defense of the Nation or to the conduct of the foreign affairs of the United States;

(iii) information relating to the ability of the United States to protect the national security against foreign intelligence activities.

(4) "Attorney General" means the Attorney General of the United States or in his absence the acting Attorney General.

(5) "Foreign power" includes foreign governments, factions, parties, military forces, or organizations of such entities, whether or not recognized by the United States, or foreign based terrorist groups.

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Section 2522. Authorization for Electronic Surveillance for Foreign Intelligence Purposes.

Applications for a court order under this chapter are authorized if the President has, by written authorization, empowered the Attorney General to approve applications to Federal judges having jurisdiction under section 2523 of this chapter, and a judge to whom an application is made may grant an order, in conformity with section 2525 of this chapter, approving electronic surveillance of a foreign power or an agent of a foreign power for the purpose of obtaining foreign intelligence information.

Section 2523. Designation of Judges Authorized to Grant Orders for Electronic Surveillance.

(a) The Chief Justice of the United States shall designate seven district court judges, each of whom shall have jurisdiction to hear applications for and grant orders approving electronic surveillance anywhere within the United States under the procedures set forth in this chapter.

(b) The Chief Justice shall designate three judges from the United States district courts or courts of appeals who together shall comprise a special court of appeals which shall have jurisdiction to hear an appeal by the United States from

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the denial of any application made under this chapter. The United States shall further have the right to appeal an affirmance of denial by that court to the Supreme Court. All appeals under this chapter shall be heard and determined as expeditiously as possible.

(c) Applications made and orders granted under this chapter shall be sealed by the presiding judge and shall be kept under security measures established by the Chief Justice in consultation with the Attorney General.

Section 2524. Application for an Order.

(a) Each application for an order approving electronic surveillance under this chapter shall be made in writing upon oath or affirmation to a judge having jurisdiction under section 2523 of this chapter. Each application must be approved by the Attorney General and shall include the following information:

(1) the identity of the officer making the application;

(2) the authority conferred on the applicant by the President of the United States and the approval of the Attorney General to make the application;

(3) the identity or a characterization of the

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person who is the subject of the electronic surveillance;

(4) a statement of the facts and circumstances relied upon by the applicant to justify his belief that:

(i) the target of the electronic surveillance is a foreign power or an agent of a foreign power; and;

(ii) the facilities or the place at which the electronic surveillance is directed are being used, or are about to be used, by a foreign power or an agent of a foreign power;

(5) a statement of the procedures by which the acquisition and retention of information relating to permanent resident aliens or citizens of the United States that is not foreign intelligence information is minimized;

(6) a description of the type of information sought and a certification by the Assistant to the President for National Security Affairs or an Executive branch official designated by the President from among those Executive officers employed in the area of national security or defense and appointed by the President by and with the advice and consent of the Senate that such information is

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foreign intelligence information that cannot feasibly be obtained by normal investigative techniques;

(7) a statement of the means by which the surveillance will be effected;

(8) a statement of the facts concerning all previous applications known to the Attorney General that have been made to any judge under this chapter involving any of the persons, facilities or places specified in the application, and the action taken on each previous application; and

(9) a statement of the period of time for which the electronic surveillance is required to be maintained. If the nature of the intelligence gathering is such that the approval of the use of electronic surveillance under this chapter should not automatically terminate when the described type of information has first been obtained, a description of facts supporting the belief that additional information of the same type will be obtained thereafter.

(b) The Attorney General may require any other affidavit or certification from any other officer in connection with the application.

(c) At the time of the hearing on the application, the applicant may furnish to the judge additional information in support of the application and the judge may require the appli-

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cant to furnish such other information or evidence as may be necessary to make the determinations required by section 2525 of this title.

Section 2525. Issuance of an Order.

(a) Upon an application made pursuant to section 2524 of this title, the judge shall enter an ex parte order approving the electronic surveillance if he finds that:

(1) the President has authorized the Attorney General to approve applications for electronic surveillance for foreign intelligence information;

(2) the application has been approved by the Attorney General;

(3) on the basis of the facts submitted by the applicant, there is probable cause to believe that:

(i) the target of the electronic surveillance is a foreign power or an agent of a foreign power; and

(ii) the facilities or place at which the electronic surveillance is directed are being used, or are about to be used, by a foreign power or an agent of a foreign power;

(4) minimization procedures to be followed are

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reasonably designed to minimize the acquisition and retention of information relating to permanent resident aliens or citizens of the United States that is not foreign intelligence information;

(5) certification has been made pursuant to section 2524(a) (5) that the information sought is foreign intelligence information that cannot feasibly be obtained by normal investigative techniques.

(b) An order approving an electronic surveillance under this section shall:

(1) specify:

(i) the identity or a characterization of the persons targeted by the electronic surveillance;

(ii) the nature and location of the facilities or the place at which the electronic surveillance will be directed;

(iii) the type of information sought to be acquired;

(iv) the means by which the electronic surveillance will be effected; and

(v) the period of time during which the electronic surveillance is approved; and

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(2) direct:

(i) that the minimization procedures be followed;

(ii) that, upon the request of the applicant, a specified communication or other common carrier, landlord, custodian, contractor, or other specified person furnish the applicant forthwith any and all information, facilities, technical assistance, or other aid necessary to accomplish the electronic surveillance in such manner as will protect its secrecy and produce a minimum of interference with the services that such carrier, landlord, custodian, contractor, or other person is providing the target of electronic surveillance; and

(iii) that the applicant compensate, at the prevailing rates, such carrier, landlord, custodian, or other person for furnishing such aid.

(c) An order issued under this section may approve an electronic surveillance for the period necessary to achieve its purpose, or for ninety days, whichever is less. Extensions of an order issued under this chapter may be granted upon an application for an extension made in the same manner as required for an original application and after findings required by subsection (a) of this section. Each extension may be for the period

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necessary to achieve the purposes for which it is granted, or for ninety days, whichever is less.

(d) Notwithstanding any other provision of this chapter when the Attorney General reasonably determines that:

(1) an emergency situation exists with respect to the employment of electronic surveillance to obtain foreign intelligence information before an order authorizing such surveillance can with due diligence be obtained, and

(2) the factual basis for issuance of an order under this chapter to approve such surveillance exists, he may authorize the emergency employment of electronic surveillance if a judge designated pursuant to section 2523 of this title is informed by the Attorney General or his designate at the time of such authorization that the decision has been made to employ emergency electronic surveillance and if an application in accordance with this chapter is made to that judge as soon as practicable, but not more than twenty-four hours after the Attorney General authorizes such acquisition. In the absence of a judicial order approving such electronic surveillance, the surveillance shall terminate when the information sought is obtained, when the application for the order is denied, or after the expiration of twenty-four hours from the time of authorization

Approved For Release 2005/07/13 : CIA-RDP79M00467A001100180013-7 As provided

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in section 2523, a denial of the application may be appealed by the Attorney General.

(e) A judge denying an order under this section or a panel affirming such denial under section 2523(b) shall state the reasons therefor.

Section 2526. Use of Information.

(a) Information acquired from an electronic surveillance conducted pursuant to this chapter may be used and disclosed by Federal officers and employees only for the purposes designated under this chapter or for the enforcement of the criminal law.

(b) The minimization procedures required under this chapter shall not preclude the retention and disclosure of non-foreign intelligence information acquired incidentally which is evidence of a crime.

(c) When information acquired from or the product of an electronic surveillance conducted pursuant to this chapter is received in evidence in any trial, proceeding, or other hearing in any Federal or State court, the provisions of section 2518(9) of chapter 119 shall not apply. No otherwise privileged communication obtained in accordance with, or in violation of, the provisions of this chapter shall lose its privileged character.

(d) If an emergency employment of electronic surveillance

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is authorized under section 2525(d) and a subsequent order approving the surveillance is not obtained, the judge shall cause to be served on any United States citizen or permanent resident alien named in the application and on such other United States citizen or permanent resident alien subject to electronic surveillance as the judge may determine in his discretion it is in the interest of justice to serve, notice of

- (1) the fact of the application;
- (2) the period of the surveillance; and
- (3) the fact that during the period

information was or was not obtained.

On an ex parte showing of good cause to the judge the serving of the notice required by this subsection may be postponed or suspended for a period not to exceed ninety days. Thereafter, on a further ex parte showing of good cause, the court shall forego ordering the serving of the notice required under this subsection.

Section 2527. Report of Electronic Surveillance.

In April of each year, the Attorney General shall report to the Administrative Office of the United States Courts and shall transmit to the Congress with respect to the preceding calendar year:

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(1) the number of applications made for orders and extensions of orders approving electronic surveillance and the number of such orders and extensions granted, modified and denied;

(2) the periods of time for which applications granted authorized electronic surveillances and the actual duration of such electronic surveillances;

(3) the number of such surveillances in place at any time during the preceding year; and

(4) the number of such surveillances terminated during the preceding year.

Section 2528. Presidential Power

Nothing contained in this chapter shall limit the constitutional power of the President to order electronic surveillance for the reasons stated in section 2511(3) of Title 18, United States Code, if the facts and circumstances giving rise to such order are beyond the scope of this chapter.

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Executive Registry

Department of Justice

Washington, D.C. 20530

76-6970/1

March 2, 1976

*Basic
18 Feb
Justice*

Gentlemen:

Enclosed is a new version of the Bill on electronic surveillance, revised to take account of most of the comments which you made concerning the earlier draft, and also revised to reflect preliminary discussions we have had with Senator Kennedy's staff. The changes from the prior version are marked.

I look forward to meeting with all of you on this subject at 9:00 A.M. tomorrow, in my office.

Sincerely,

[Signature]

Antonin Scalia
Assistant Attorney General
Office of Legal Counsel

The Honorable
Monroe Leigh
Legal Adviser
State Department
2201 C Street, N.W. - 6425
Washington, D.C. 20520

The Honorable
Richard Wiley
General Counsel
Department of Defense
Pentagon - 3E-980
Washington, D.C. 20301

Justice

✓ Mitchell Rogovin, Esq.
Special Counsel to Director
Central Intelligence Agency
Room 7D-60
Washington, D.C. 20505

Enclosure



A B I L L

To amend Title 18, United States Code, to authorize applications for a court order approving the use of electronic surveillance to obtain foreign intelligence information.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,
that this Act may be cited as the "Foreign Intelligence Surveillance Act of 1976."

Sec. 2. Title 18, United States Code, is amended by adding a new chapter after Chapter 119:

Chapter 120. Electronic Surveillance within the United States for Foreign Intelligence Purposes --

Section 2521. Definitions.

(a) Except as otherwise provided in this section the definitions of Section 2510 of this title shall apply to this chapter.

(b) As used in this chapter --

(1) "Agent of a foreign power" means:

(i) a person who is not a permanent resident alien or citizen of the United States and who is an officer or employee of a foreign power; or

(ii) a person who, pursuant to the direction

- 2 -

of a foreign power, is engaged in spying secret intelligence activities, sabotage, or terrorist activities, or who conspires with, assists or aids and abets such a person in engaging in such activities.

(2) "Electronic surveillance" means:

(i) the acquisition, by an electronic mechanical or other device, of-the

(a) in the United States, of the contents of a wire communication to or from a person in the United States, without the consent of any party thereto, where such acquisition occurs while the communication is being transmitted by wire;

(b) of the contents of a radio transmission, without the consent of any party thereto, made with a reasonable expectation of privacy where neither the point of origin nor any intended recipient is located outside the the United States; and

(ii) the installation of an electronic mechanical or other device in the United States to acquire information under circumstances in which a person

- 3 -

has a reasonable expectation of privacy.

(3) "Foreign intelligence information" means:

(i) information relating to the ability of the United States to protect itself against actual or potential attack or other hostile acts of a foreign power or its agents;

(ii) information, with respect to foreign nations powers or territories, which because of its importance is deemed necessary essential to the security or national defense of the Nation or to the conduct of the foreign affairs of the United States;

(iii) information relating to the ability of the United States to protect national-security information against foreign intelligence activities.

(4) "Attorney General" means the Attorney General of the United States or in his absence the acting Attorney General.

(5) "Foreign power" includes foreign governments, factions, parties, or military forces, groups of such entities or enterprises owned or controlled by such entities, whether or not recognized by the United States, or foreign based terrorist groups.

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Section 2522. Authorization for Electronic Surveillance for Foreign Intelligence Purposes.

Applications for a court order under this chapter are authorized if the President may has, by written authorization, empowered the Attorney General to approve applications to Federal judges having jurisdiction under section 2523 of this chapter, and a judge to whom an application is made may grant an order, in conformity with section 2525 of this chapter, approving electronic surveillance of a foreign power or an agent of a foreign power for the purpose of obtaining foreign intelligence information.

Section 2523. Designation of Judges Authorized to Grant Orders for Electronic Surveillance.

(a) The Chief Justice of the United States shall designate seven district court judges, ~~any-one~~ each of whom shall ~~be-authorized~~ have jurisdiction to hear applications for and grant orders approving electronic surveillance anywhere within the United States under the procedures set forth in this chapter.

(b) The Chief Justice shall designate three judges from the United States district courts or courts of appeals who together shall comprise a special court of appeals ~~to~~ which shall have jurisdiction to hear an appeal by the United States

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~~shall have the right to appeal~~ from the denial of any application made under this chapter. The United States shall further have the right to appeal an affirmance of denial by that court to the Supreme Court. All appeals under this chapter shall be heard and determined as expeditiously as possible.

(c) Applications made and orders granted under this chapter shall be sealed by the presiding judge and shall be kept under security measures established by the Chief Justice in consultation with the Attorney General.

Section 2524. Application for an Order.

(a) Each application for an order approving electronic surveillance under this chapter shall be made in writing upon oath or affirmation to a judge having jurisdiction under section 2523 of this chapter. Each application must be approved by the Attorney General and shall include the following information:

(1) the identity of the officer making the application;

(2) the authority ~~of~~ conferred on the applicant by the President of the United States and the approval of the Attorney General to make the application;

(3) a statement of the facts and circumstances

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relied upon by the applicant to justify his belief that:

(i) the target of the electronic surveillance is a foreign power or an agent of a foreign power; and

(ii) the facilities or the place at which the electronic surveillance is directed are being used, or are about to be used, by a foreign power or an agent of a foreign power;

(4) a statement of the procedures by which the acquisition and retention of ~~non-foreign-intelligence information-will-be-minimized~~ information relating to permanent resident aliens or citizens of the United States that is not foreign intelligence information is minimized;

(5) a description of the type of information sought and a certification by the Assistant to the President for National Security Affairs ~~or-any-other-appropriate-Executive-branch-official~~ or an Executive branch official designated by the President from among those Executive officers appointed by the President by and with the advice and consent of the Senate that such information is foreign intelligence information that cannot feasibly be obtained by normal investigative techniques;

(6) a statement of the means by which the surveillance

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will be effected;

(7) a statement of the facts concerning all previous applications known to the Attorney General that have been made to any judge under this chapter involving any of the persons, facilities or places specified in the application, and the action taken on each previous application; and

(8) a statement of the period of time for which the electronic surveillance is required to be maintained. If the nature of the intelligence gathering is such that the approval of the use of electronic surveillance under this chapter should not automatically terminate when the described type of information has first been obtained, a description of facts supporting the belief that additional information of the same type will be obtained thereafter.

(b) The Attorney General may require any other affidavit or certification from any other officer in connection with the application.

(c) At the time of the hearing on the application, the applicant may furnish to the judge additional information in support of the application and the judge may require the applicant to furnish such other information or evidence as may be necessary to make the determinations required by section 2525 of this title.

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Section 2525. Issuance of an Order.

(a) Upon an application made pursuant to section 2524 of this title, the judge shall enter an ex parte order approving the electronic surveillance if he finds that:

(1) the President has authorized the Attorney General to approve applications for electronic surveillance for foreign intelligence information;

(2) the application has been approved by the Attorney General;

(3) on the basis of the facts submitted by the applicant, there is probable cause to believe that:

(i) the target of the electronic surveillance is a foreign power or an agent of a foreign power; and

(ii) the facilities or place at which the electronic surveillance is directed are being used, or are about to be used, by a foreign power or an agent of a foreign power;

(4) minimization procedures to be followed are reasonably designed to minimize the acquisition and retention of ~~non-foreign-intelligence-information~~; information relating to permanent resident aliens or citizens of the United States that is not foreign intelligence information;

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(5) certification has been made pursuant to section 2524(a)(5) that the information sought is foreign intelligence information that cannot feasibly be obtained by normal investigative techniques.

(b) An order approving an electronic surveillance under this section shall:

(1) specify:

(i) the identity or a characterization of the persons targeted by the electronic surveillance;

(ii) the nature and location of the facilities or the place at which the electronic surveillance will be directed;

(iii) the type of information sought;

(iv) the type of ~~communication~~ information sought to be acquired and the means by which the electronic surveillance will be effected; and

(v) the period of time during which the electronic surveillance is approved; and

(2) direct:

(i) that the minimization procedures be followed;

(ii) that, upon the request of the applicant, a specified communication or other common carrier, landlord, custodian, contractor, or other specified

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person furnish the applicant forthwith any and all information, facilities, technical assistance, or other aid necessary to accomplish the electronic surveillance in such manner as will protect its secrecy and produce a minimum of interference with the services that such carrier, landlord, custodian, contractor, or other person is providing the target of electronic surveillance; and

(iii) that the applicant compensate, at the prevailing rates, such carrier, landlord, custodian, or other person for furnishing such aid.

(c) An order issued under this section may approve an electronic surveillance for the period necessary to achieve its purpose, or for ninety days, whichever is less. Extensions of an order issued under this chapter may be granted upon an application for an extension made in the same manner as required for an original application and after findings required by subsection (a) of this section. An extension may be for the period necessary to achieve the purposes for which it was granted, or for ninety days, whichever is less.

(d) Notwithstanding any other provision of this chapter when the Attorney General reasonably determines that:

(1) an emergency situation exists with respect to the employment of electronic surveillance to obtain

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foreign intelligence information before an order authorizing such surveillance can with due diligence be obtained, and

(2) the factual basis for issuance of an order under this chapter to approve such surveillance exists, he may authorize the emergency employment of electronic surveillance if a judge designated pursuant to section 2523 of this title is informed as soon as possible after the decision is made to employ emergency electronic surveillance and if an application in accordance with this chapter is made to that judge within 24 hours after that decision, whether or not the electronic surveillance is still in effect at that time. The emergency electronic surveillance may continue until the judge approves or denies an order pursuant to subsection (a) of this section or after the expiration of 48 hours, whichever occurs first. ~~7-but~~ If the order is denied, the judge shall stay the effect of his denial if the Attorney General appeals that denial within 24 hours. for 48 hours if the Attorney General indicates his intention to appeal that denial and if he certifies that the appeal is not taken for purpose of delay.

(e) A judge denying an order under this section or a panel affirming such denial under section 2523(b) shall state the reasons therefor.

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Section 2526. Use of Information.

(a) Information acquired from an electronic surveillance conducted pursuant to this chapter may be used and disclosed by Federal officers and employees only to the extent that such use and disclosure is appropriate to the proper performance of their official duties and is in conformity with the procedures for minimization required under section 2525(a)(4).

(b) The minimization procedures required under this chapter shall not preclude the retention and disclosure of non-foreign intelligence information acquired incidentally which is evidence of a crime.

(c) When information acquired from or the product of an electronic surveillance conducted pursuant to this chapter is received in evidence in any trial, proceeding, or other hearing in any Federal or State court, the provisions of section 2518(9) of chapter 119 shall not apply. No otherwise privileged communication obtained in accordance with, or in violation of, the provisions of this chapter shall lose its privileged character.

(d) If an emergency employment of electronic surveillance is authorized under section 2525(d) and a subsequent order approving the surveillance is not obtained, the judge with whom an application for an order under section 2524 is filed shall cause to be served on the persons named in the application, and on such other parties persons under electronic surveillance as

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the judge may determine in his discretion it is in the interest of justice to serve, ~~an inventory which shall include~~ notice of

- (1) the fact of the application;
- (2) the period of the surveillance; and
- (3) the fact that during the period

information was or was not obtained.

On an ex parte showing of good cause to the judge the serving of the inventory notice required by this subsection may be postponed or suspended for a period not to exceed ninety days. Thereafter, on a further ex parte showing of good cause the court shall forego ordering the serving of the notice required under this subsection.

Section 2527. Report of Electronic Surveillance.

(a) ~~Within thirty days after the expiration of the period of surveillance authorized in an order, or extension of an order, entered under section 2525, or after the denial of an application for an order or extension approving an electronic surveillance,~~ In April of each year, the Attorney General shall report to the Administrative Office of the United States Courts:

- (1) the fact that an order or extension was applied for;
- (2) the fact that the application for the order or extension was granted as applied for, was granted in modified form, or was denied; and

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filed Justice

Department of Justice
 Washington, D.C. 20530

75-~~8844~~ 8543
Justice
 76-857

Executive Registry
 76-6970

February 18, 1976

Dear

This will confirm my telephone conversation with your secretary of this morning in which a meeting with Mr. Scalia was set for Tuesday, February 24 at 10:00 o'clock, to be held in Mr. Scalia's office.

Enclosed is a revised draft of the bill on electronic surveillance, which will be the subject of this meeting.

Sincerely,

Elizabeth Tulos
 (Miss) Elizabeth Tulos
 Secretary to Mr. Scalia

The Honorable

Special Counsel to Director
 Central Intelligence Agency
 Washington, D.C. 20505

PICKED UP BY MESSENGER

Justice



February 18, 1976

A B I L L

To amend Title 18, United States Code, to authorize applications for a court order approving the use of electronic surveillance to obtain foreign intelligence information.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,
that this Act may be cited as the "Foreign Intelligence Surveillance Act of 1976."

Sec. 2. Title 18, United States Code, is amended by adding a new chapter after Chapter 119:

Chapter 120. Electronic Surveillance within the United States for Foreign Intelligence Purposes --

Section 2521. Definitions.

(a) Except as otherwise provided in this section the definitions of Section 2510 of this title shall apply to this chapter.

(b) As used in this chapter --

(1) "Agent of a foreign power" means an officer or employee of a foreign power; or a person who, pursuant to the direction of a foreign power, is engaged in spying, sabotage, or terrorist activities, or who assists a person in engaging in such activities.

(2) "Electronic surveillance" means:

(i) the acquisition, by an electronic device, of the

(a) contents of a wire communication to or from a person in the United States, without the consent of any party thereto, where such acquisition occurs while the communication is being transmitted by wire;

(b) of a radio transmission, without the consent of any party thereto, made with a reasonable expectation of privacy where neither the point of origin nor any intended recipient is located outside the United States; and

(ii) the installation in the United States of any electronic device on the property of a person without his consent or in a public place where a person has a reasonable expectation of privacy.

(3) "Foreign intelligence information" means:

(i) information relating to the ability of the United States to protect itself against actual or potential attack or other hostile acts of a foreign power or its agents;

(ii) information, with respect to foreign nations or territories, deemed necessary to the security of the Nation or to the conduct of the foreign affairs of the United States;

(iii) information relating to the ability of

the United States to protect national security information against foreign intelligence activities.

(4) "Attorney General" means the Attorney General of the United States or in his absence the acting Attorney General.

(5) "Foreign power" includes foreign governments, factions, parties, or military forces, whether or not recognized by the United States, or foreign based terrorist groups.

Section 2522. Authorization for Electronic Surveillance for Foreign Intelligence Purposes.

The President may, by written authorization, empower the Attorney General to approve applications to Federal judges having jurisdiction under section 2523 of this chapter, and a judge to whom an application is made may grant an order, in conformity with section 2525 of this chapter, approving electronic surveillance of an agent of a foreign power for the purpose of obtaining foreign intelligence information.

Section 2523. Designation of Judges Authorized to Grant Orders for Electronic Surveillance.

(a) The Chief Justice of the United States shall designate seven district court judges, any one of whom shall be authorized to hear applications for and grant orders approving electronic surveillance, anywhere within the United States under

the procedures set forth in this chapter.

(b) The Chief Justice shall designate three judges from the United States courts of appeals who together shall comprise a special court of appeals to which the United States shall have the right to appeal the denial of any application made under this chapter. The United States shall further have the right to appeal an affirmance of denial by that court to the Supreme Court. All appeals under this chapter shall be heard and determined as expeditiously as possible.

(c) Applications made and orders granted under this chapter shall be sealed by the presiding judge and shall be kept under security measures established by the Chief Justice in consultation with the Attorney General.

Section 2524. Application for an Order.

(a) Each application for an order approving electronic surveillance under this chapter shall be made in writing upon oath or affirmation to a judge having jurisdiction under section 2523 of this chapter. Each application must be approved by the Attorney General and shall include the following information:

(1) the identity of the officer making the application;

(2) the authority of the applicant to make the application;

(3) a statement of the facts and circumstances relied upon by the applicant to justify his belief that

(i) the target of the electronic surveillance is an agent of a foreign power; and

(ii) the facilities or the place at which the electronic surveillance is directed are being used, or are about to be used, by an agent of a foreign power;

(4) a statement of the procedures by which the acquisition and retention of non-foreign intelligence information will be minimized;

(5) a description of the type of information sought and a certification by the Assistant to the President for National Security Affairs or any other appropriate Executive branch official appointed by the President by and with the advice and consent of the Senate that such information is foreign intelligence information that cannot feasibly be obtained by normal investigative techniques;

(6) a statement of the means by which the surveillance will be effected;

(7) a statement of the facts concerning all previous applications known to the Attorney General that have been made to any judge under this chapter involving any of

the persons, facilities or places specified in the application, and the action taken on each previous application; and

(8) a statement of the period of time for which the electronic surveillance is required to be maintained. If the nature of the intelligence gathering is such that the approval of the use of electronic surveillance under this chapter should not automatically terminate when the described type of information has first been obtained, a description of facts supporting the belief that additional information of the same type will be obtained thereafter.

(b) The Attorney General may require any other affidavit or certification from any other officer in connection with the application.

(c) At the time of the hearing on the application, the applicant may furnish to the judge additional information in support of the application and the judge may require the applicant to furnish such other information or evidence as may be necessary to make the determinations required by section 2525 of this title.

Section 2525. Issuance of an Order.

(a) Upon an application made pursuant to section 2524 of this title, the judge shall enter an ex parte order approving the electronic surveillance if he finds that:

(1) the President has authorized the Attorney

General to approve applications for electronic surveillance
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for foreign intelligence information;

(2) the application has been approved by the Attorney General;

(3) on the basis of the facts submitted by the applicant, there is probable cause to believe that:

(i) the target of the electronic surveillance is an agent of a foreign power; and

(ii) the facilities or place at which the electronic surveillance is directed are being used, or are about to be used, by an agent of a foreign power;

(4) minimization procedures to be followed are reasonably designed to minimize the acquisition and retention of non-foreign intelligence information;

(5) certification has been made pursuant to section 2524(a)(5) that the information sought is foreign intelligence information that cannot feasibly be obtained by normal investigative techniques.

(b) An order approving an electronic surveillance under this section shall:

(1) specify:

(i) the identity or a characterization of the persons targeted by the electronic surveillance;

(ii) the nature and location of the facilities or the place at which the electronic surveillance will be directed;

(iii) the type of information sought;

(iv) the type of communication sought to be acquired and the means by which the electronic surveillance will be effected; and

(v) the period of time during which the electronic surveillance is approved; and

(2) direct:

(i) that the minimization procedures be followed;

(ii) that, upon the request of the applicant, a specified communication or other common carrier, landlord, custodian, contractor, or other specified person furnish the applicant forthwith any and all information, facilities, technical assistance, or other aid necessary to accomplish the electronic surveillance in such manner as will protect its secrecy and produce a minimum of interference with the services that such carrier, landlord, custodian, contractor, or other person is providing the target of electronic surveillance; and

(iii) that the applicant compensate, at the prevailing rates, such carrier, landlord, custodian, or other person for furnishing such aid.

(c) An order issued under this section may approve an electronic surveillance for the period necessary to achieve its purpose, or for ninety days, whichever is less. Extensions of an order issued under this chapter may be granted upon an application for an extension made in the same manner as required for an original application and after findings required by subsection (a) of this section. An extension may be for the period necessary to achieve the purposes for which it was granted, or for ninety days, whichever is less.

(d) Notwithstanding any other provision of this chapter when the Attorney General reasonably determines that:

(1) an emergency situation exists with respect to the employment of electronic surveillance to obtain foreign intelligence information before an order authorizing such surveillance can with due diligence be obtained, and

(2) the factual basis for issuance of an order under this chapter to approve such surveillance exists, he may authorize the emergency employment of electronic surveillance if a judge designated pursuant to section 2523 of this title is informed as soon as possible after the decision is made to employ emergency electronic surveillance and if an application in accordance with this chapter is made to that

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judge within 24 hours after that decision, whether or not the electronic surveillance is still in effect at that time. The emergency electronic surveillance may continue until the judge approves or denies an order pursuant to subsection (a) of this section, but the judge shall stay the effect of his denial if the Attorney General appeals that denial within 24 hours.

(e) A judge denying an order under this section or a panel affirming such denial under section 2523(b) shall state the reasons therefor.

Section 2526. Use of Information.

(a) Information acquired from an electronic surveillance conducted pursuant to this chapter may be used and disclosed by Federal officers and employees only to the extent that such use and disclosure is appropriate to the proper performance of their official duties.

(b) The minimization procedures required under this chapter shall not preclude the retention and disclosure of non-foreign intelligence information acquired incidentally which is evidence of a crime.

(c) When information acquired from or the product of an electronic surveillance conducted pursuant to this chapter is received in evidence in any trial, proceeding, or other hearing in any Federal or State court, the provisions of section 2518(9) of chapter 119 shall not apply. No otherwise privileged

communication obtained in accordance with, or in violation of, the provisions of this chapter shall lose its privileged character.

(d) If an emergency employment of electronic surveillance is authorized under section 2525(d) and a subsequent order approving the surveillance is not obtained, the judge with whom an application for an order under section 2524 is filed shall cause to be served on the persons named in the application, and such other parties under electronic surveillance as the judge may determine in his discretion it is in the interest of justice to serve, an inventory which shall include notice of

- (1) the fact of the application;
- (2) the period of the surveillance; and
- (3) the fact that during the period information was or was not obtained.

On an ex parte showing of good cause to the judge the serving of the inventory required by this subsection may be postponed or suspended.

Section 2527. Report of Electronic Surveillance.

(a) Within thirty days after the expiration of the period of surveillance authorized in an order, or extension of an order, entered under section 2525, or after the denial of an application for an order or extension approving an electronic surveillance, the Attorney General shall report to the Administrative Office of the United States Courts:

(1) the fact that an order or extension was applied for;

(2) the fact that the application for the order or extension was granted as applied for, was granted in modified form, or was denied; and

(3) the period of time the electronic surveillance was authorized by the order or extension.

(b) In April of each year the Attorney General shall transmit to the Congress a report concerning the number of applications made for orders and extensions of orders approving electronic surveillance, and the number of such orders and extensions granted and denied, during the preceding calendar year.

Sec. 3. Section 2511 (3) of Title 18, United States Code, is amended by adding after the word chapter, "or chapter 120 of this Title."

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WASHINGTON, D.C. 20505

Executive Registry

76-6889/3

OGC 76-0928

27 February 1976

The Honorable Antonin Scalia
Assistant Attorney General
Office of Legal Counsel
Department of Justice
Washington, D.C. 20530

76-6889/2
17 Feb 76
J-23.1

Dear Mr. Scalia:

Pursuant to our conversation today, I am enclosing proposed procedures regarding the Attorney General's approval of CIA counter-intelligence activities within the United States.

In addition, please make the following changes to our "Proposed Procedures Under Executive Order 11905 for the Conduct of Electronic Surveillance":

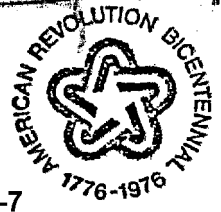
(1) Insert the following new paragraph 2.b.:
"Communications initiated or received by United States persons will not be targeted by CIA for interception except as provided in paragraphs 2.e. and f. Communications initiated or received by United States persons, made from or intended by the sender to be received in the United States, which are incidentally intercepted by CIA's collection activities abroad in the course of targeting a non-United States person or communications in a particular foreign area, may be disseminated within the U.S. intelligence community and Government to the extent that they contain: " .

(2) Add in paragraph 2.c. after the words "targeting non-United States persons" the words "or communications in a foreign area," .

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(3) Add in paragraph 2.d. after the words "targeting a non-United States person" the words "or communications in a particular foreign area,".

(4) Add a new paragraph e.: "The Director of Central Intelligence may seek the approval of the Attorney General or his designee to conduct electronic surveillance of a United States citizen or permanent resident alien abroad as outlined herein. A request to conduct such surveillance which contains a statement of the facts and circumstances which justify the belief that:

(1) the person at whom the search is directed is reasonably believed to be acting on behalf of a foreign power or engaging in international terrorist or narcotics activities or activities threatening the national security;

(2) the facilities or premises at which the search will be directed are being used or are about to be used by the person described in (1); and

(3) that the information sought is foreign intelligence or counterintelligence information or pertains to international terrorist or narcotics activities and cannot reasonably be obtained in any other manner. "

(5) Add a new subparagraph f.: "If the Director of Central Intelligence determines that an emergency exists which prevents or makes impractical the prior approval of the Attorney General, and if he also has reason to believe that the factors listed in 2.e. (1) - (3) are present he may authorize the electronic surveillance and shall report the same as soon as possible to the Attorney General."

Sincerely



Assistant General Counsel

Enclosure

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Attorney General Approval of CIA
Counterintelligence Activities Within the United States

1. Pursuant to section 4(b)(4) of Executive Order 11905, the CIA will conduct counterintelligence activities within the United States only in coordination with the FBI after approval of the Attorney General.

2. A CIA request to conduct counterintelligence activities within the United States shall contain the following information:

- a. the target of the counterintelligence activity;
- b. the nature of the counterintelligence activity to be conducted by CIA;
- c. the information or object which is sought to be obtained or accomplished.

Such requests by CIA shall be forwarded to the Director, FBI who shall forward the same to the Attorney General for his approval or disapproval.

3. Any FBI request for CIA participation in counterintelligence activity conducted by the FBI which is concurred in by the Director of Central Intelligence will be forwarded to the Attorney General for his approval or disapproval as outlined in paragraph 2.

4. The phrase "counterintelligence activities within the U.S." shall not be defined to include either the provision of technical support by CIA to the FBI or the passage of counterintelligence information between CIA and the FBI.

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